



L. JOYCE HAMPERS  
COMMISSIONER

# *The Commonwealth of Massachusetts*

*Department of Revenue*

*Leverett Saltonstall Building,*

*100 Cambridge Street, Boston 02204*

June 25, 1981

The ("Company")  
is engaged in Massachusetts in the business of breeding and raising laboratory animals, including rats and mice. The Company sells the animals for use in biomedical research. You inquire whether the Massachusetts sales and use taxes apply to the Company's purchases of the following items:

- (1) Specially-designed containers for shipping the animals to customers (the containers are not customarily returned by animal buyers for reuse);
- (2) Specially-formulated feed for consumption by the animals; and
- (3) Materials, tools and fuel, and machinery and replacement parts thereof, used in breeding and raising the animals.

Massachusetts General Laws Chapter 64H, Section 6 exempts from tax sales of:

- (a) Feed for livestock and poultry which are to be sold in the regular course of business (G.L. c. 64H, s. 6(p)(2));

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- (b) Nonreturnable containers when sold without the contents to persons who place the contents in the container and sell the contents together with the container ("nonreturnable" containers are all those of a kind not customarily returned by the buyer of the contents for reuse) (G.L. c. 64H, s. 6(q)); and
- (c) Materials, tools and fuel, or any substitute therefor, consumed and used directly and exclusively in agricultural production, and machinery or replacement parts thereof, used directly and exclusively in agricultural production (G.L. c. 64H, s. 6(r) and (s)); "agricultural production" is defined in paragraphs (r) and (s) as including "the raising of poultry and livestock."

The Alabama Court of Appeals in Brundidge Milling Co. v. State, 45 Ala. App. 208, 228 So.2d 475 (1969), held that food for catfish grown on a farm for commercial purposes did not come within the scope of a sales tax exemption for "feed for livestock." Moreover, a federal court has ruled that the raising of rabbits, rats and guinea pigs for use in laboratory experimentation was not the "raising of livestock" for purposes of the Fair Labor Standards Act; the court relied upon the Department of Labor's interpretation of the word "livestock," which provided that

"[t]he meaning of the term 'livestock'... is confined to the ordinary use of the word and includes only domestic animals ordinarily raised on farms. That Congress did not use this term in its generic sense is supported by the specific enumeration of activities of fur-bearing animals, which would be included in the generic meaning of the word. The term includes the following animals, among others: cattle (both dairy and beef cattle), sheep, swine, horses, mules, donkeys and goats. It does not include such animals as albino and other rats, mice, guinea pigs and hamsters, which are ordinarily used by laboratories for research purposes." 29 C.F.R. s. 780.129 (1965).

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Beck v. Southern Rabbit Corporation, 248 F. Supp. 1005 (N.D. Ga. 1966). See 29 C.F.R. s. 780.120 (1980), which includes language identical to that cited.

Based on the foregoing, it is ruled that

- (1) the Company's purchases of the nonreturnable containers for shipping animals to its customers are exempt from tax; and
- (2) the Company's purchases of the feed, the materials, tools and fuel, and the machinery and replacement parts, for use in connection with the breeding and raising of laboratory animals, are subject to tax.

Very truly yours,

*Daniel B. Green*

Acting Commissioner of Revenue

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